

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
V.)	CRIMINAL NO. DR-23-CR-00895-AM
)	
)	
(3) GILBERTO MAGALLANES, JR.)	
)	
Defendant.)	

**UNITED STATES OF AMERICA'S
MOTION FOR PRELIMINARY ORDER OF FORFEITURE**

Comes now the United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney and makes this Motion for Preliminary Order of Forfeiture, pursuant to Title 21 U.S.C. § 853(n)(1)-(7), and FED. R. CRIM. P. 32.2(b)(1) & (2) and (c)(1), and in support thereof states the following:

I.

On September 19, 2024, the Defendant pled guilty pursuant to a written Plea Agreement (ECF No. 156) to count eleven of the Superseding Indictment (ECF No. 43) charging Title 18 U.S.C. §§ 922(g)(1) and 924(a)(8) violations. The Superseding Indictment also included a Notice of Demand for Forfeiture pursuant to Title 18 U.S.C. § 924(d)(1), made applicable to criminal forfeiture by Title 28 U.S.C. § 2461(c), that the United States was seeking the forfeiture of certain property, namely:

- 1. Diamond Back DB380 handgun (S/N: ZM1919); and**
- 2. Any related ammunition and firearm accessories,**

hereinafter referred to as the Subject Property.

The Defendant agreed in his plea to forfeit all right, title, and interest in the Subject Property to the United States.

II.

The United States of America moves the Court to find that the Defendant has an interest in the Subject Property, and that the United States of America has proven by a preponderance of the evidence the nexus between the Subject Property and the Title 18 U.S.C. §§ 922(g)(1) and 924(a)(8) violations, by virtue of the Defendant's plea and the facts contained therein.

III.

Accordingly, the United States of America moves this Honorable Court for entry of a Preliminary Order of Forfeiture which forfeits all right, title, and interest of the Defendant in the Subject Property.

IV.

The United States moves the Court, pursuant to Title 21 U.S.C. § 853(g) and FED. R. CRIM. P. 32.2(b)(3), for an Order authorizing the United States through its lawfully designated agents and agencies, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, to seize, take custody, control, and possession of the Subject Property, whether held by the Defendant or a third party.

V.

The United States further moves the Court, pursuant to FED. R. CRIM. P. 32.2(b)(6)(A) and (C) and Title 21 U.S.C. § 853(n)(1), for an Order authorizing the United States to cause publication for at least 30 consecutive days on an official internet government forfeiture site (www.forfeiture.gov) of notice of the Preliminary Order of Forfeiture, and of its intent to dispose of the Subject Property in such manner as the United States directs.

The United States of America further moves this Court for an Order authorizing that the contents of the published notice comply with FED. R. CRIM. P. 32.2(b)(6)(B).

VI.

The United States further moves the Court, pursuant to FED. R. CRIM. P. 32.2(b)(6), for an Order authorizing the United States to send direct notice of the Preliminary Order of Forfeiture to any person or entity who reasonably appears to the United States to be a potential petitioner with standing to contest the forfeiture in the ancillary proceeding.

The United States of America further moves this Honorable Court that Appendix A¹ be served on potential petitioners along with the Preliminary Order of Forfeiture.

VII.

Pursuant to FED. R. CRIM. P. 32.2(c)(1)(B) and to promote judicial economy, the United States further moves the Court for an Order authorizing the United States to commence discovery proceedings, including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas pursuant to FED. R. CIV. P. 45, at the time that any petitions are filed to resolve any third-party issues.

VIII.

Lastly, the United States moves the Court, pursuant to FED. R. CRIM. P. 32.2(b)(4)(B), to order that at the time of the sentencing of the Defendant, the Preliminary Order of Forfeiture becomes final as to the Defendant, be made part of the sentence, and be included in the Judgment

¹Appendix A, which is entitled “Direct Notice of Preliminary Order of Forfeiture,” sets forth the appropriate procedures, deadlines, and applicable statutes necessary to file a third-party petition.

in a Criminal Case.

WHEREFORE, PREMISES CONSIDERED, the United States of America moves this Honorable Court for entry of a Preliminary Order of Forfeiture.

Respectfully submitted,

JAIME ESPARZA
United States Attorney

By: /s/
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Attorneys for the United States of America

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2024, the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System which will transmit notification of such filing to the following CM/ECF participant:

Bianca Rocha Del Rio

bianca_r_del_rio@fd.org

Attorney for Defendant (3) GILBERTO MAGALLANES, JR.

/s/
Antonio Franco, Jr.
Assistant United States Attorney

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 V.) CRIMINAL NO. DR-23-CR-00895-AM
)
 (3) GILBERTO MAGALLANES, JR.)
)
 Defendant.)

DIRECT NOTICE OF PRELIMINARY ORDER OF FORFEITURE

Notice is hereby given that in the case of *U.S. v. (3) GILBERTO MAGALLANES, JR.*, Criminal No. DR-23-CR-00895-AM, the United States District Court for the Western District of Texas entered a Preliminary Order of Forfeiture condemning and forfeiting the following property to the United States of America:

- 1. Diamond Back DB380 handgun (S/N: ZM1919); and**
- 2. Any related ammunition and firearm accessories.**

The United States hereby gives notice of its intent to dispose of the forfeited property in such manner as the United States Attorney General may direct. Any person, other than the defendant(s), asserting a legal interest in property which has been ordered forfeited to the United States must file a petition within 30 days of the final publication of notice or his receipt of notice, whichever is earlier pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure and Title 21 U.S.C. § 853(n)(1)-(3). The petition must be filed with the Clerk of the Court, 111 East Broadway, Room L100, Del Rio, Texas 78840, and a copy served upon Assistant United States Attorney Antonio Franco, Jr., 601 NW Loop 410, Suite 600, San Antonio, Texas 78216.

The petition must comply with the requirements of Title 21 U.S.C. § 853(n).

If you fail to file a petition to assert your interest in the above-described property within the time prescribed above, your interest in this property will be lost and forfeited to the United States, which will then have clear title to the property and will dispose of the property in accordance with the law.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
 V.) **CRIMINAL NO. DR-23-CR-00895-AM**
)
)
 (3) GILBERTO MAGALLANES, JR.)
)
 Defendant.)

PRELIMINARY ORDER OF FORFEITURE

Came on to be considered the United States of America's Motion for Preliminary Order of Forfeiture (ECF No. ____), pursuant to Title 21 U.S.C. § 853(n)(1)-(7), and FED. R. CRIM. P. 32.2(b)(1) & (2) and (c)(1), and this Court being fully and wholly apprised in all its premises, finds that the United States has established by a preponderance of the evidence a nexus between the property described below and the Title 18 U.S.C. §§ 922(g)(1) and 924(a)(8) violations, by virtue of the Defendant's plea and the facts contained therein, and that the Defendant has an interest in said property. As such, said Motion is meritorious, and hereby is in all things GRANTED.

IT IS THEREFORE **ORDERED** that all right, title, and interest of the Defendant in certain property, namely:

1. Diamond Back DB380 handgun (S/N: ZM1919); and
2. Any related ammunition and firearm accessories,

hereinafter referred to as the Subject Property, be, and hereby is **FORFEITED** to the United States of America.

IT IS FURTHER **ORDERED** that upon entry of the Preliminary Order of Forfeiture, the United States of America, through its lawfully designated agents and agencies, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, shall seize, take custody, control, and

possession of the Subject Property whether held by the Defendant or a third party.

IT IS FURTHER **ORDERED** that the United States shall cause publication for at least 30 consecutive days on an official internet government forfeiture site (www.forfeiture.gov) of the notice of the Preliminary Order of Forfeiture and of its intent to dispose of the Subject Property in such manner as the United States directs. The United States must send notice to any person or entity who reasonably appears to be a potential petitioner with standing to contest the forfeiture in the ancillary proceeding.

IT IS FURTHER **ORDERED** that the United States shall send Direct Notice of the Preliminary Order of Forfeiture, Appendix A, which is attached to the United States of America's Motion for Preliminary Order of Forfeiture and incorporated herein, to those known to the United States to have an interest in the Subject Property.

IT IS FURTHER **ORDERED** that in the event a third-party petition is filed as to the Subject Property, the United States shall commence discovery proceedings, including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas pursuant to FED. R. CIV. P. 45, to resolve any third-party issues.

IT IS FURTHER **ORDERED** that at the time of the sentencing of the Defendant, the Preliminary Order of Forfeiture shall become final as to the Defendant, be made part of the sentence, and be included in the Judgment in a Criminal Case.

SIGNED this _____ day of _____, 2024.

ALIA MOSES
CHIEF UNITED STATES DISTRICT JUDGE